

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DOROTHY STANLEY, AS EXECUTRIX OF	:	
THE ESTATE OF HELEN A. RUNGE,	:	
Plaintiff	:	
	:	
	:	No. 05-10849-RGS
v.	:	(Judge Stearns)
	:	
WALTER J. KELLY, et al.,	:	CIVIL ACTION
Defendants	:	JURY TRIAL DEMANDED

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANT KELLY'S MOTION IN LIMINE  
TO PRECLUDE TESTIMONY REGARDING KELLY'S ATTEMPTED  
COMMUNICATIONS WITH ATTORNEY KERR**

AND NOW, COMES, Plaintiff Dorothy Stanley ("Plaintiff"), as Executrix of the Estate of Helen A. Runge ("Runge"), and respectfully submits this Memorandum in Opposition to the Motion *in Limine* of Defendant Kelly ("Defendant Kelly") to Preclude Testimony Regarding Kelly's Attempted Communications with Attorney Kerr ("Motion").

**I. BACKGROUND**

Plaintiff maintains this action against the collective Defendants seeking to recover for physical, emotional and financial injuries. Defendant Kelly has filed the instant Motion seeking to preclude testimony (presumably, Defendant Kelly's testimony) regarding his contact with Attorney Peter Kerr. Plaintiff respectfully submits that this Honorable Court should deny Defendant Kelly's Motion as such

testimony is both relevant and holds probative value, which outweighs any alleged prejudice to Defendant Kelly.

## II. ARGUMENT

Defendant Kelly has requested that this Honorable Court preclude testimony related to his contact with Attorney Peter Kerr subsequent to Plaintiff having filed her initial Complaint. Defendant Kelly seeks preclusion of this testimony as "not relevant to or probative of any of the claims in this matter" and on the basis that it "would only serve to prejudice Defendant Kelly and mislead the jury." On the contrary, Defendant Kelly's testimony regarding his contact with Attorney Kerr is highly relevant to Plaintiff's claims against Kelly and would assist the jury in understanding Defendant Kelly's relationship with Plaintiff in relation to Attorney Kerr. The testimony at issue is probative to Plaintiff's claims and contradictory to Defendant Kelly's alleged defenses. Thus, the probative value substantially outweighs any alleged prejudice to Defendant Kelly.

Plaintiff has averred that Runge utilized the services of Attorney Kerr, who retired from the practice of law in 1998. *See Second Amended Complaint, No. 11.* Kerr shared office space with Defendant Kelly, who represented himself to Runge to be the law partner of Attorney Kerr when the only relationship was that they shared office space. *See Second Amended Complaint, No. 12.* In 2001, Runge contacted Defendant Kelly, understanding that he had taken over Attorney Kerr's clients, to provide her with legal assistance. *See Second Amended Complaint, No. 13.*

Defendant Kelly testified, during deposition, that he contacted Attorney Kerr in 2006, well after Runge filed her initial Complaint against Defendant Kelly. *See Exhibit B* to Defendant Kelly's instant Memorandum in Support of Motion. Defendant Kelly testified he sought privileged information from Attorney Kerr's file that Attorney Kerr had as part of his attorney-client relationship with Runge because he, Defendant Kelly, was being sued. *Id.* Defendant Kelly acknowledged that this was not his file or work product and that he did not represent Plaintiff at the time of the request. Defendant Kelly was at a loss to justify his continuation of unethical behavior directed toward Plaintiff. Defendant Kelly also testified in his deposition many times about his duties under the Massachusetts Rules of Professional Conduct regarding his actions as an attorney in relation to Runge. Defendant Kelly has asserted that he was required to have himself appointed Plaintiff's guardian ex parte even after he was terminated by her as her counsel because of his ethical obligations. *See* pertinent portion of Defendant Kelly's deposition transcript attached as Exhibit A.

Defendant Kelly himself has made his ethics, or lack thereof, a part or all of his purported defense. He cannot now argue that evidence as to his credibility regarding the ethical nature of his actions is not relevant. Further, Attorney Kerr's relationship with both Defendant Kelly and Runge is at issue in Plaintiff's claims against Defendant Kelly's and Defendant Kelly's purported defenses to such claims. Thus, testimony regarding Defendant Kelly's contact with Attorney Kerr is relevant to this matter and should be allowed.

### III. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that this Honorable Court deny Defendant Kelly's Motion.

Respectfully submitted,

LATSHA DAVIS YOHE & MCKENNA, P.C.

Dated: February 11, 2008

By /s/ Glenn R. Davis  
Glenn R. Davis, *Pro Hac Vice*  
1700 Bent Creek Boulevard, Suite 140  
Mechanicsburg, PA 17050  
(717) 620-2424  
gdavis@ldylaw.com

Blake J. Godbout, BBO #196380  
BLAKE J. GODBOUT & ASSOCIATES  
33 Broad Street, 11th Floor  
Boston, MA 02109  
(617) 523-6677  
blake@bjgalaw.com

Attorneys for Plaintiff, Dorothy Stanley,  
Executrix of The Estate of Helen A. Runge

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document was served upon the attorney of record for each party by electronic transmission.

James S. Hamrock, Jr.  
Hamrock & Tocci  
101 Main Street, 18th Floor  
Cambridge, MA 02142  
jhamrock@htclaw.com

Michele Carlucci  
George S. Rockas  
Wilson Elser Moskowitz Edelman & Dicker LLP  
155 Federal Street  
Boston, MA 02110  
michele.carlucci@wilsonelser.com  
george.rockas@wilsonelser.com

Michael Williams  
Lawson & Weitzen, LLP  
88 Black Falcon Avenue, Suite 145  
Boston, MA 02210-1736  
mwiliams@lawson-weitzen.com

Dated: February 11, 2008

/s/ Glenn R. Davis

Glenn R. Davis

1                   **ORIGINAL**

1

2                   Volume: I

3                   Pages: 1-304

4                   UNITED STATES DISTRICT COURT

5                   EASTERN DIVISION

5                   ----- x

6                   HELEN RUNGE,                   Civil Action

7                   Plaintiff,                   No. 05-10849-RGS

8                   WALTER J. KELLY,  
9                   KERRY L. BLOOMINGDALE, M.D., and  
10                  SUNBRIDGE NURSING AND  
11                  REHABILITATION CENTER,

12                  Defendants.

12                  ----- x

13                  DEPOSITION OF WALTER J. KELLY

14                  Friday, December 1, 2006, 9:26 a.m.

15                  Blake J. Godbout & Associates

16                  33 Broad Street - 11th Floor

17                  Boston, Massachusetts 02109

18

19

20                  ----- Reporter: Toni F. Beckwith, RMR -----

21

22                  Toni F. Beckwith, Registered Merit Reporter  
23                  50 Winsor Avenue  
24                  Watertown, Massachusetts 02472  
                    Tel: 617.924.2731  
                    Fax: 617.924.9899

274

1           A. The police already knew about it. So  
2           if it was a question of notifying the police,  
3           the police already knew about it because they  
4           were there at the Sunbridge Nursing Home.

5 . . . . . MR. ROCKAS: I'm going to try to make  
6 my call.

7 (Pause)

8 (Exhibit 19 marked)

for identification)

10 Q. Mr. Kelly, a document has been placed  
11 in front of you marked Kelly 19 dated May 12,  
12 2003, a letter authored by a Robert M. Palmer,  
13 M.D. Have you seen that letter prior to today?

14 A. Yes.

15 Q. Do you recall when you first saw that  
16 letter?

A. Around the end of July of '03.

18 Q. What did you understand from that  
19 letter?

20                   A. I understood that Helen was in --  
21                   Helen was with her daughter in Columbus. I  
22                   understood that I was never going to get an  
23                   independent evaluation of Helen. I understood  
24                   that my ethical duties under the professional

1       conduct rules could not be fulfilled any  
2       further, and I had taken all reasonable steps to  
3       do what I needed to for Helen. And I knew I  
4       wasn't going to be successful to get an  
5       independent evaluation of her.

6           Q. And why were you required to get an  
7       independent evaluation of her, Mr. Kelly?

8           A. Based upon the abduction, I couldn't  
9       trust the Stanleys were looking out for her best  
10      interest.

11          Q. And you made that determination when,  
12       that you couldn't get an independent evaluation?

13          A. In my discussions with Tom Schiavoni.

14          Q. And when were those discussions taking  
15      place?

16          A. At the end of July.

17          Q. And that's of 2003?

18          A. That's correct.

19          Q. And did you understand that this  
20      letter from Dr. Palmer wasn't an independent  
21      evaluation?

22          A. I don't know who Dr. Palmer is. I  
23      know nothing about Tryon Medical Group. I don't  
24      know that it's an independent -- it's not a

1 friend of Dorothy Stanley's through the hospital  
2 that she works at in order to assist her in  
3 having me stop going forward any further.

4 Q. Did you ever contact Dr. Palmer to  
5 explore any questions or concerns you had with  
6 regard to his May 12, 2003 letter?

7 A. No.

8 Q. You indicated that you couldn't  
9 fulfill your ethical duty. What ethical duty  
10 are you referring to?

11 A. It was rules of professional conduct,  
12 1.14.

13 Q. And interpret that to this  
14 information.

15 A. If you have an elderly client that you  
16 are in fear that they're being abused mentally,  
17 physically or financially, you have a duty to  
18 continue to represent them.

19 Q. And just so I'm clear, Attorney Kelly,  
20 in your opinion, your ethical obligation under  
21 1.14, did that arise from the court appointing  
22 you as a guardian?

23 A. No.

24 Q. It arose as a result of the

1 attorney-client relationship that you had with  
2 Helen Runge?

3 A. That's correct.

4 Q. And that's the same relationship that  
5 she, in essence, terminated you from on April  
6 29?

7 A. At a time when there was a medical  
8 certificate saying that she wasn't competent to  
9 make decisions for herself.

10 Q. Okay. When I was asking you about the  
11 police reports that were attached to Kelly 18, I  
12 think I asked you if you had filed that police  
13 report, and you indicated no.

14 A. Filed what police report?

15 Q. There appears to be some type of a  
16 narrative on the back of --

17 A. I believe that came from the nursing  
18 home, but I'm not sure.

19 Q. It says, Notified State Police,  
20 notified staff, attempted. So apparently the  
21 State Police were notified?

22 A. Yes.

23 Q. And am I correct in understanding your  
24 testimony that you didn't notify the police?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

ORIGINAL

1

Volume: II

Pages: 1-104

UNITED STATES DISTRICT COURT

EASTERN DIVISION

----- X -----

HELEN RUNGE, Civil Action

Plaintiff, No. 05-10849-RGS

WALTER J. KELLY,  
KERRY L. BLOOMINGDALE, M.D., and  
SUNBRIDGE NURSING AND  
REHABILITATION CENTER,

Defendants.

----- X -----

CONTINUED DEPOSITION OF WALTER J. KELLY

Thursday, December 14, 2006, 1:13 p.m.

Blake J. Godbout & Associates

33 Broad Street - 11th Floor

Boston, Massachusetts 02109

----- Reporter: Toni F. Beckwith, RMR -----

Toni F. Beckwith, Registered Merit Reporter

50 Winsor Avenue

Watertown, Massachusetts 02472

Tel: 617.924.2731

Fax: 617.924.9899

1 Q. Did you contact anyone with regard to  
2 their attempt to become the representatives of  
3 Helen Runge?

4 MR. ROCKAS: Objection.

5 A. I contacted her bank accounts, banks.

6 Q. Banks?

7 A. Yes.

8 Q. When did you contact them?

9 A. The 30th. I think the 30th or the  
10 1st. I'm not sure.

11 Q. Why did you contact the banks?

12 A. Well, again, Rules of Professional  
13 Conduct 1.4 says if you feel that you have a  
14 client who's being taken advantage of mentally,  
15 physically, psychologically, an elderly client  
16 like Helen, or financially, you have a duty to  
17 continue to represent them, to protect them.

18 Q. So you contacted the banks on either  
19 the 30th or the 1st?

20 A. I don't remember the exact date.

21 Q. Did you go out and see Helen on the  
22 29th, 30th or 1st?

23 MR. ROCKAS: Objection.

24 A. I did not go to see Helen on the 29th,

1 Bank you indicated?

2 A. That's correct.

3 Q. Was that in a client fund of yours?

4 A. That's correct.

5 Q. What did you do with the 25,000 bucks?

6 A. Well, I believe I paid Tom

7 Schiavoni -- well, if you look on my accounting  
8 filed with the court, you can see where I spent  
9 it.

10 Q. You paid Tom Schiavoni for what?

11 A. For representing me regarding the  
12 guardianship.

13 Q. To get yourself appointed?

14 A. That's correct.

15 Q. You paid Tom Schiavoni out of Helen  
16 Runge's funds?

17 A. That's correct.

18 Q. You didn't pay him out of your own  
19 funds?

20 A. No.

21 Q. Did Helen Runge consent to  
22 Mr. Schiavoni representing you on her behalf?

23 A. Again, I'm saying that it's under  
24 Professional Conduct Rules 1.14.

1 MR. ROCKAS: Just answer the question.

2 A. No.

3 Q. Did Tom Schiavoni send an engagement  
4 letter to Helen Runge?

5 A. No.

6 Q. Was Helen Runge ever made aware that  
7 Tom Schiavoni was providing legal services for  
8 which she was about to be billed?

9 A. No, not that I know of.

10 Q. The fees for which Tom Schiavoni was  
11 paid was for the preparation of a petition for  
12 your appointment?

13 A. And going over all the facts and the  
14 information on Helen with me, going over  
15 affidavits and the various.

16 Q. Was Tom Schiavoni ever engaged to  
17 represent Helen specifically during this  
18 proceeding?

19 A. No.

20 Q. Other than Tom Schiavoni's fees being  
21 paid, where did the remainder of the 25,000  
22 bucks go on May 20, 2003?

23 A. Well, that's the deposit. You have a  
24 copy of the accounting, and it tells you where